

**IN THE HIGH COURT OF FIJI**  
**AT SUVA**  
**CRIMINAL JURISDICTION**

CRIMINAL CASE NO: HAC 270/2013

**BETWEEN** : THE STATE

**AND** : 1. KOROIVOU WAQAVAKAVITI  
: 2. VERENIKI VAKAREWA  
: 3. NEMANI ROKODUA

**COUNSEL** : Ms A Vavadakua for the State  
Ms V Tamanisau for the Accused

Dates of Trial : 26-28/05/2014

Date of Summing Up : 29/05/2014

Date of Judgment : 30/05/2014

[Name of the victim is suppressed. She will be referred to as M.S.]

**JUDGMENT**

[01] Koroivou Waqavakaviti, Vereniki Vakarewa and Nemani Rokodua have been charged with the following charges on information dated 22<sup>nd</sup> August, 2013.

**First Count**

**Statement of Offence**

**INDECENT ASSAULT:** contrary to Section 212 (1) of the Crimes Decree No: 44 of 2009.

**Particulars of Offence**

Koroivou Waqavakaviti on the 23<sup>rd</sup> day of June 2013 at Lokia, Nausori in the Central Division, unlawfully and indecently assaulted M.S. by sucking her breasts.

**Second Count**

**Statement of Offence**

**RAPE:** Contrary to Section 207(1) (2) (c) of the Crimes Decree No: 44 of 2009.

**Particulars of Offence**

Koroivou Waqavakaviti, on the 23<sup>rd</sup> day of June 2013 at Lokia, Nausori in the Central Division, penetrated the mouth of M.V, with his penis without her consent.

**Third Count**

**Statement of Offence**

**ATTEMPTED RAPE:** contrary to Section 208 of the Crimes Decree No: 44 of 2009.

**Particulars of Offence**

Nemani Rokodua on the 23<sup>rd</sup> day of June 2013 at Lokia, Nausori in the Central Division, attempted to have carnal knowledge of M.V, without her consent.

**Fourth Count**

**Statement of Offence**

**RAPE:** Contrary to Section 207(1) (2) (b) of the Crimes Decree No: 44 of 2009.

**Particulars of Offence**

Vereniki Vakarewa on the 23rd day of June 2013 at Lokia, Nausori in the Central Division, penetrated the vagina of M.V, with his tongue without her consent.

**Fifth Count**

**Statement of Offence**

**RAPE:** Contrary to Section 207(1) (2) (c) of the Crimes Decree No: 44 of 2009.

**Particulars of Offence**

Vereniki Vakarewa, on the 23rd day of June 2013 at Lokia, Nausori in the Central Division, penetrated the mouth of M.V, with his penis without her consent.

**Sixth Count**

**Statement of Offence**

**RAPE:** Contrary to Section 207(1) (2) (c) of the Crimes Decree No: 44 of 2009.


**Particulars of Offence**

Nemani Rokodua, on the 23rd day of June 2013 at Lokia, Nausori in the Central Division, penetrated the mouth of M.V, with his penis without her consent.

- [02] The three assessors have expressed unanimous opinion that the accused persons are not guilty of their respective charges. The unanimous opinion is completely tenable on the basis of evidence considered in accordance with the legal directions that have been made.
- [03] According to the victim, she was sexually assaulted and raped by the First accused when she went to his house to collect a schoolbag which had been borrowed by him from one of her brothers. After the First accused committed the offence the Second and the Third accused took turns and indulged sexual intercourse with the victim. When this incident was happening, three boys said to be the victim's relations were standing outside. But she did not shout, scream or sought help from the three boys at that time. Immediately after the incident she went home but did not tell anybody about the incident. She only came out when her brother questioned her about the incident. One of her aunties also questioned her about the incident. She was worried about the accused persons' safety as her father might assault them if she divulges this incident. Incident was reported after 6 days.
- [04] The doctor who examined the victim confirmed that the victim's hymen was perforated and no lacerations, bruises or bleeding noted. She did not notice anything unusual on the victim. She had examined her after 06 days of the incident. Although she recommended for general counselling, the victim was not taken to a counsellor.
- [05] The accused persons took up the position that the sexual intercourse was consensual. The victim did not inform the incident until her brother and her aunty questioned her. As she was worried about the accused persons' safety, she did not inform anybody including her father.
- [06] The evidence presented by the prosecution clearly confirms the defence version. The offence of rape is made out only if there was no consent from the alleged victim.
- [07] After careful consideration of the evidence presented by prosecution, it is very clear that the incident had happened with the consent of the victim.

[08] Hence, I agree with the unanimous not guilty verdict of assessors and find the accused persons are not guilty of their respective charges. They are acquitted accordingly.



  
P Kumararatnam  
**JUDGE**

At Suva  
30/05/2014